

**BOARD OF APPEALS CASE NO. 5013**  
  
**APPLICANT: Hess Family Builders of**  
**Harford County LLC**  
**REQUEST: Variance to construct single-**  
**family dwellings 45 feet high in the R1**  
**District; 501, 502, 505, 507, 509, 511 Cedar**  
**Hill Court, Bel Air**  
  
**HEARING DATE: March 15, 2000**

**BEFORE THE**  
  
**ZONING HEARING EXAMINER**  
  
**OF HARFORD COUNTY**  
  
**Hearing Advertised**  
**Aegis: 1/26/00 & 2/2/00**  
**Record: 1/28/00 & 2/4/00**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Hess Family Builders of Harford County LLC, is requesting variances from Section 267-36(B), Table IV, of the Harford County Code to allow single-family dwellings to exceed the permitted maximum height of 35 feet (45 feet is proposed) in an R1 Urban Residential District.

The properties which are the subject of this request are located at 501, 503, 505, 507, 509 and 511 Cedar Hill Court, Bel Air in the subdivision known as Cedar Hill. They are also designated as Lots 1-6 Cedar Hill PT 97/52. All of the lots are located in the First Election District and are more specifically identified as Parcel 419, in Grid 2F, on Tax Map 56. All six lots together total approximately 4.723 acres and they are currently owned by Edwin E. and Carolyn D. Hess.

Mr. Robert Neubeck, managing partner for the Applicant, Hess Family Builders, appeared and testified that he has been involved in the supervision of home construction for over 14 years. The company holds the contract for the sale of the lots in the Cedar Hill subdivision which are the subject of this request. Mr. Neubeck testified that all of the lots involved are 3/4 of an acre in size or larger and they are comprised primarily of very hilly terrain, sloping uphill on Cedar Lane. According to Mr. Neubeck, the houses which are planned for this subdivision are 2-story, colonial type homes, in excess of 3,000 square feet. Building plans call for walkout basements.

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Mr. Neubeck stated that when they began to locate the first house on one of the sites, they realized that the slope of the property and the steep grade from front to back prevented them from building the home as planned unless a variance from the 35-foot height restriction was obtained. In order for the homes on the subject lots to conform to the design of the other homes in the neighborhood, the proposed variance of 45 feet in height is needed. Mr. Neubeck explained that, if the home were built on a level lot, there would be no need for a variance because the home would comply with the 35 foot height restriction. However, on a sloping lot, a home designed with a walkout basement and a roof pitch of 10-12, is 10 feet higher than the same home on a level lot. It was Mr. Neubeck's testimony that the sloping terrain makes these parcels unique. He contends that if the variances are denied, it will cause practical difficulty for the Applicant by causing the design to be inconsistent with the other homes in the subdivision, it will devalue the other properties in the neighborhood and it will make it difficult for the house design to comply with the applicable deed restrictions. According to Mr. Neubeck, granting of the variance will not cause any harm to adjoining properties or to the neighborhood, nor would it impair the purpose and intent of the Code.

Mr. Torrence Pierce, a professional engineer at Frederick Ward & Associates, was qualified and testified as an expert in the field of civil engineering. Mr. Pierce stated that the subject properties contain rolling to steep grades, some with slopes in excess of 25 percent grade from Cedar Lane, which makes these parcels unique in terms of their topography. The lots are predominantly wooded. According to Mr. Pierce, the topography of the lot affects the calculation of the height of the structure on the lot. If the Applicant were to try to build the homes within the 35 foot height requirement, they would have to cut into the forest conservation area and create a steep and undesirable grade around the building. This would create water problems in the homes. Attempts to meet the height requirement by lowering the roofline would result in less attractive homes which are not consistent with other houses in the neighborhood, reducing the market value and the ability to sell the homes.

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The testimony regarding the marketability of the homes in the absence of the requested variances was echoed by Elsie Herbst, a realtor and manager of a Coldwell Banker Real Estate firm, who was qualified and testified as an expert in the field of residential real estate in Harford County. Ms. Herbst testified that the design of the homes proposed by the Applicant, with steep roofs, high ceilings and walkout basements, are the type of homes that would sell in this type of subdivision. It was Ms. Herbst's opinion that there would be no adverse effect on property values in the surrounding area if the variances were granted.

Mr. William Monk, an urban planner and expert in land planning with 25 years of experience, was qualified as an expert in land use and planning. Mr. Monk testified that the subject properties are unique because of the topographical conditions on the sites, in addition to the location of drainage and utility easements on the properties. It was his testimony that denial of the requested variances would result in practical difficulty and create an unnecessary burden for the Applicant. He agreed with prior testimony of the witnesses that an alternative design with a flatter roof would be disproportionate in comparison with neighboring houses and attempts to meet the height requirement by cutting into the hills on the property would not be appropriate. Mr. Monk stated that granting of the variances would not cause any substantial detriment to the adjacent properties, nor would it impair the purpose of the Code. Rather, approval of the variances would allow uniformity of design.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, testified that the Department recommended approval of the requested variances based upon the unique topographical conditions present on the properties and the fact that there would be no adverse impacts to adjacent properties or to the surrounding neighborhood.

No protestants appeared in opposition to the Applicant's request.

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### **CONCLUSION:**

The Applicant is requesting a variance to Section 267-36(B), Table IV, of the Harford County Code, which limits the maximum height of a single family dwelling to 35 feet in an R1 Urban Residential District. The Applicant is proposing a variance to increase the maximum height to 45 feet on six lots within the subdivision.

The uncontradicted testimony of the witnesses is that the topographic conditions on all six lots render them unique and different from other, more level, lots within the subdivision. The sloping topography also makes the lots ideal for walk-out basements. However, Section 267-4 of the Code defines building height as the distance measured from the average contact grade to the highest point of the roof. Therefore, a dwelling with a walk-out basement on a sloping lot would have a lower rear elevation than an identical house built on a flat lot. As a result, the homes designed by the Applicant for construction on these lots actually have different maximum heights when built, even though the design of the homes is essentially the same. The evidence offered by the Applicant demonstrates that denial of the variance would cause practical difficulty because it would require some of the homes to be redesigned in a manner that is inconsistent with other homes in the neighborhood or result in inappropriate grading on sloped sites. In addition, evidence was presented to show that in several prior zoning appeal cases, variances have been granted in nearby subdivisions allowing the height variance based upon the same or similar circumstances.

The Applicant also presented evidence and testimony that the variance would not be substantially detrimental to adjacent properties or materially impair the purpose of the Code because the variance would actually allow the homes to remain consistent with and in conformity with other homes within the subdivision and in the surrounding neighborhoods. It is therefore the finding of the Hearing Examiner that the subject parcels are unique due to topographic conditions and that denial of the variances would cause practical difficulty and hardship to the Applicant. Further, a granting of the variances will not have an adverse impact on the neighborhood or the intent of the Code.

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Therefore, it is the recommendation of the Hearing Examiner that the requested variances to increase the maximum height of the dwellings on Lots 1-6 of the subject Cedar Hill subdivision (501, 503, 505, 507, 509 and 511 Cedar Hill Court) be approved, subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections to construct the proposed dwellings;
2. The height of the dwellings shall not exceed 45 feet.

Date April 14, 2000

Valerie H. Twanmoh  
Zoning Hearing Examiner